

complaint

Mr R complains that NewDay Limited won't refund to him the money that he paid for some floor tiles.

background

Mr R used his NewDay credit card in June 2018 to pay £538.06 for some floor tiles. The tiles were laid but Mr R says that he then noticed that there was a colour variation amongst the tiles. He contacted the supplier and it offered him a 20% refund. He didn't accept that offer and claimed a refund from NewDay. It said that he hadn't returned the tiles to the supplier so it was unable to refund the money that he'd paid for them. Mr R wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. He said that if the tiles hadn't been laid a fair resolution would have been for NewDay to take possession of them and refund Mr R in full. But as that wasn't practical and as Mr R hadn't mitigated his circumstances, he thought that a fair outcome was for NewDay to refund Mr R 50% of the payment that he made.

Mr R has accepted the investigator's recommendation but NewDay has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Mr R had the opportunity to check for colour variations in the tiles prior to them being laid and the tiler should also have checked them;
- it accepts that there is a variation in the colour of the tiles but that is often a characteristic of the tiles and even in the same batch the tiles can vary quite dramatically;
- tile suppliers document the importance of checking tiles for colour and size prior to them being laid and Mr R and the fitter should take some responsibility for not noticing the variations;
- Mr R had a duty to mitigate losses and should have taken steps to prevent this from happening; and
- the supplier's terms and conditions on its website clearly point out the importance of checking the goods for suitability and colour variations and it doesn't believe that Mr R has followed that advice.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr R complained to NewDay about the tiles. It dealt with his complaint as a claim for a chargeback and said that, because he hadn't returned the tiles to the supplier, the claim couldn't be successful. It initially didn't deal with his complaint as a claim for a refund under section 75 – but then said it would do so – yet I've seen no evidence to show that it's properly considered his complaint under section 75.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr R's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the tiles and that NewDay's response to his claim under section 75 wasn't fair or

reasonable. I'm not determining the outcome of Mr R's claim under section 75 as only a court would be able to do that.

From the photos that Mr R has provided there does seem to be a noticeable difference in the finish of some of the tiles. I've not been provided with enough evidence to show whether or not that difference would have been noticeable before the tiles were laid. Mr R says that neither he nor his tiler noticed the difference before the tiles were laid.

The supplier offered to refund to Mr R 20% of the cost of the tiles and the investigator recommended that it would be fair and reasonable for NewDay to refund to him 50% of the cost of the tiles.

NewDay has referred to the supplier's terms and conditions. But it's not been able to provide a copy of the terms and conditions which include the provision to which it's referred – and the supplier's current website doesn't include that provision.

I consider it to be more likely than not that there is a difference in the finish on some of the tiles – and I consider that to be a breach of contract by the supplier for which NewDay is jointly liable under section 75. Mr R has accepted the investigator's recommendation that NewDay should refund to him 50% of the cost of the tiles. I consider that to be fair and reasonable in these circumstances.

my final decision

For these reasons, my decision is that I uphold Mr R's complaint and I order NewDay Limited to refund to him 50% of the cost of the tiles.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 May 2020.

Jarrold Hastings
ombudsman